IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7333 of 2007()

CRIME NO.1086/07 OF KOTHAMANGALAM POLICE STATION

PETITIONER/ACCUSED

BENNY KURIAKOSE, S/O KURIAKOSE,
AGED 45 YEARS, PUTHETHU HOUSE,
BYEPASS ROAD, KOTHAMANGALAM.

BY ADV. SRI.ALEXANDER JOSEPH

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA, REPRESENTED BY
DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION,
KOTHAMANGALAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7333 of 2007

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Dated this the 4th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered for offences punishable, inter alia, under Section 380 I.P.C. The defacto complainant is the father of the petitioner, a person aged 72 years. The defacto complainant and the accused reside under the same roof. The crux of the allegations of the defacto complainant, aged father, is that the son broke open his Almira and removed the title deeds, cheque leaves etc. which the old father had kept there. The alleged theft took place on 14.10.2007. The complaint is seen filed only on 16.11.2007. Investigation is in progress. The petitioner, the sole accused, apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The allegations raised against him are false. He is willing to co-operate with the Investigators. He does not deserve to suffer the trauma of arrest and detention.

Appropriate conditions may be imposed, but the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Prosecutor opposes the application. He submits that the investigation in this crime clearly reveals the complicity of the petitioner. The delay of one month between the occurrence and lodging of the complaint cannot be reckoned as crucial or vital in the facts and circumstances of this case, where the parties are father and son. Stolen articles have not been traced. The petitioner has to be interrogated. Attempt must be made to recover the stolen articles. In any view of the matter, the petitioner may not be granted anticipatory bail, submits the learned Prosecutor.

4. The case diary has been perused. I have gone through the F.I.R. in detail. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must be directed to appear before the Investigator or the learned Magistrate

having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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